

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA**

MISC. APPLICATION NO. 08 OF 2019

(Originating from the Complaint Ref. CMA/MBY/117/2016 of the
Commission for Mediation and Arbitration for Mbeya at Mbeya)

DAUDI CONSTANTINO.....APPLICANT

VERSUS

COCACOLA KWANZA LIMITED.....RESPONDENT

RULING

Date of Last Order: 17/05/2020
Date of Judgment: 27/08/2020

MONGELLA, J.

The Applicant, under legal representation of Mr. Benedict Sahwi, learned Advocate, filed an application in this Court seeking for extension of time within which to file revision out of time against the award issued by the CMA on 22nd May 2017 in Reference No. CMA/MBY/117/2016. The application is made under Rule 24 (1) and 24 (2) (a), (b), (c), (d), (e), and (f); 24 (3) (a), (b), (c) and (d); 55 (1) and (2); and Rule 56 (1), (2) and (3) of the Labour Court Rules, 2007, G.N. No. 106 of 2007. It is supported by an affidavit of the applicant's advocate Mr. Benedict Sahwi. The application was argued by written submissions.



In the submission, as well as, in the affidavit in support of the application, which was adopted to form part of the submission, Mr. Sahwi advanced one main reason for seeking the extension. He contended that the award was pronounced on 22nd May 2017. Thereafter, the applicant filed an application for Revision, being Revision No. 28 of 2017 which was filed within time. He submitted that Revision No. 28 of 2017 was struck out for being supported by a defective affidavit on 04th June, 2019 thus leading to the present application for extension of time, which was filed on 14th June 2019. He challenged the argument by the respondent raised in the counter affidavit to the effect that the application for extension of time ought to have been filed within sixty days from the date the award was pronounced on 22nd May 2017.

He argued that since the applicant did not sleep on his matter and the initial application was struck out on 04th June 2019, then time should start to run from 04th June 2019. In support of his argument he cited the case of **Angelina Tairo v. Tanzania Breweries Ltd**, Misc. Labour Application No. 10 of 2019 (HC at Mbeya, unreported) in which the court computed time from the date the initial application was struck out. Citing the case of **Tanzania Rent A Car Limited v. Peter Kimuhu**, Civil Application No. 226/01 of 2017 (CAT at DSM, unreported) he argued that the sixty days rule does not apply in applications for extension of time. He urged the court to consider the reason advanced for the delay, which is basically technical, and make a correct decision as guided under the case of **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 and that of **Vodacom Tanzania Public Co. Ltd. v. Commissioner General (TRA)**, Civil Application



No. 465/20 of 2019 (CAT at DSM, unreported). In both cases the court considered the technical delay and allowed the application.

On the other hand, Mr. Mika Mbise who represented the respondent opposed the application. He first adopted the counter affidavit and prayed for the application to be dismissed on two main grounds. First, he argued that the inaction on the part of the counsel does not constitute sufficient reason for extending the time where there is indiligence. In support of his argument he cited the case of **Mtokambali Masalaga v. Edward Mogha**, Civil Application No. MBY 5 of 2005. Second, he argued that the applicant's counsel argued in his submission matters not stated in the affidavit in support of the application. Citing the case of **Said O. Mamba v. The Hon. Attorney General and 7 Others**, Misc. Application No. 10 of 2017 (unreported) to support his argument, he prayed for the application to be dismissed.

I have given the arguments by both counsels due consideration. From the outset I wish to reiterate the settled position that extension of time is entirely within the court's discretion, which of course has to be exercised judiciously taking into account the sufficient reasons for the delay advanced by the applicant. This position has been settled in a plethora of decisions. For instance, in **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported), the Court of Appeal ruled:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time is where it has been sufficiently established that the delay was with sufficient cause."



In another case of **Jaluma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (unreported) it was held:

"All that the applicant should be concerned is showing sufficient reason why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused or contributed by the dilatory conduct on his part."

Mr. Sahwi advanced one main reason to the effect that the applicant delayed while pursuing his matter in this Court in Revision No. 28 of 2017. This fact was stated in the affidavit in support of the application as well. In principle, when one pursues his claim in court and the same ends up being struck out on technical reasons, he/she is deemed to be under technical delay. I thus do not agree with Mr. Mbise's contention that the applicant's counsel has argued in his submission matters not stated in the affidavit in support of the application. Technical delay has been treated by the courts as being sufficient reason in granting extension of time, so long as the matter that was struck out initially was filed within time. In fact, there was no dispute between the parties as to whether Revision 28 of 2017, which was struck out thus leading to this application, was filed out of time. Mr. Sahwi argued that it was filed within time and Mr. Mbise never disputed that assertion. In **Fortunatus Masha v. William Shija & Another** (supra) the Court of Appeal held:

"... a distinction should be made between cases involving real or actual delays and those like the present on which only involve what can be called technical delay in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for



one reason or another has been found to be incompetent and a fresh appeal has to be instituted..."

In **Elly Peter Sanya v. Ester Nelson**, Civil Appeal No. 151 of 2018 (CAT, unreported) the Court also held:

"... it appears that it escaped the mind of the learned Judge that a delay that occurs when one is diligently prosecuting a matter in court constituted a technical delay which amounts to good and sufficient reason to grant extension of time..."

See also: **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT decision); **Luhumbo Investment Limited v. National Bank of Commerce Limited**, Misc. Civil Application no.17 of 2018 (HC Tabora, Utamwa J.) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application no. 81 of 2017 (HC Tabora, Utamwa, J.).

Considering the observation I have made above, I find that the applicant was under technical delay thus having sufficient reason. I therefore proceed to grant the application. The applicant shall file his application for revision within twenty one (21) days from the date of this Ruling.

Dated at Mbeya on this 27th day of August 2020.




L. M. MONGELLA
JUDGE

Court: Judgment delivered in Mbeya in Chambers on this 27th day of August 2020 in the presence of Ms. Rehema Mgeni, learned counsel, holding brief for both parties' counsels.


L. M. MONGELLA

JUDGE